LAU YONG YING v. THE BANK OF PUNJAB & ORS AND OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
DAVID WONG DAK WAH JCA
UMI KALTHUM ABDUL MAJID JCA
HASNAH MOHAMMED HASHIM JCA
[CIVIL APPEALS NO: B-02(A)-900-06-2015,
B-01(A)-214-07-2015 & B-02(A)-935-06-2015]
21 DECEMBER 2017

CRIMINAL LAW: *Offences – Money-laundering – Seizure – Notice – Public Prosecutor issued notice of seizure of land – Whether issuance of notice prohibited any further dealings in land – Whether any party registered as owner of land after issuance of notice of seizure only acquired defeasible title – Whether title liable to be set aside on ground it was acquired by means of void instrument – Whether notice of seizure validated by Registrar of Titles' failure to endorse terms of notice of seizure on affected land's document of title – Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ss. 44, 51, 54, 56 & 57*

In 2008, three Pakistani citizens, one Harris and two others ('the Pakistani criminals') purportedly defrauded the first respondent ('the plaintiff') in the sum of Rupee 9 billion. The Pakistani criminals were tracked and found to be in Malaysia. Subsequently, the police identified, froze and seized the assets of the Pakistani criminals pursuant to the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('the AMLATFA') and they were deported to Pakistan. One of the assets seized by the police was a piece of land with a double-storey house erected on it and registered under the name of Harris ('the property'). The police issued a freezing order pursuant to s. 44 of the AMLATFA and requested the Registrar of Titles Selangor ('the fourth defendant') to lodge a Registrar's caveat ('the caveat') over the property to prevent any dealings with regard to the property pending investigation. The Public Prosecutor issued a notice of seizure ('the notice') pursuant to s. 51(1)(a) of the AMLATFA and the said notice was duly served on the fourth defendant. In 2010, one Lee Kam Sun ('the first defendant') and Ewe Chooi Lian ('the second defendant'), who were the original proprietors of the property, commenced an action at the High Court against Harris to recover the unpaid balance of the purchase price of the property. The first and second defendants obtained judgment-in-default ('the JID') of appearance against Harris for the sum of RM850,000. The first and second defendants then took steps to enforce the JID by way of a writ of seizure and sale on the property. *Via* an order, the High Court ordered that all the ownership, rights and interests in the property were forfeited and vested in the plaintiff

('the AMLATFA vesting order'). Pursuant to the AMLATFA vesting order, the plaintiff took possession of the property. However, without the plaintiff's knowledge, the property was auctioned in 2012 and Lau Yong Ying ('the third defendant') had successfully bid and purchased the property. The caveat was removed/cancelled by the fourth defendant without any prior notice to the police or the plaintiff. The third and fifth defendants then executed a facility agreement and the third defendant created a charge over the property as security for the facilities. When the plaintiff conducted various searches at the courts and land offices, it discovered (i) the writ action commenced by the first and second defendants against Harris and the subsequent execution action; (ii) that the property was sold to the third defendant; and (iii) that the third defendant filed an application for removal of the caveat. This prompted the plaintiff to commence an action, by way of an originating summons ('the OS'), against the defendants for various declarations, orders and consequential reliefs in relation to the plaintiff's legal and beneficial ownership and interest in the property. The High Court allowed the OS and ordered the cancellation of the registration of the third defendant as proprietor and directed that the plaintiff be registered as the owner of the property. Hence, the present appeals.

Held (dismissing appeals)

Per Hasnah Mohammed Hashim JCA delivering the judgment of the court:

(1) The notice was served on the fourth defendant, who was under a statutory duty to endorse in the document of title. The fourth defendant failed to do so. Section 51(2) of the AMLATFA provides that once the Registrar of Titles has been served with a notice of seizure, he must endorse the terms of the notice of seizure on the document of title in respect of the immovable property in the Register at his office. Where an endorsement of a notice of seizure has been made, it shall have the effect of prohibiting all dealings in respect of the immovable property. Although the fourth defendant did not endorse in the document of title, it did not invalidate the notice. (paras 37-40)

(2) The AMLATFA vesting order further cemented the prohibition of any dealings in respect of the property. The AMLATFA vesting order affecting the property, to date, still remained in force and was unchallenged and was therefore valid, binding and enforceable. Thus, any dealing in respect of the property subsequent to the AMLATFA vesting order was nullity and unlawful. Such dealing or transaction must be declared void, illegal and ought to be set aside. (para 43)

(3) Despite having cancelled the caveat, the fourth defendant proceeded to enter into the consent order with the third defendant. The fourth defendant chose to ignore, not only the notice and the AMLATFA vesting order, but also his statutory duty as well as the legal ramifications of such a cancellation. The consent order ought to be set aside. The High Court has the power to set aside the orders found to be null and void *ex debito justitiae* on the grounds that (i) any dealing subsequent to the notice was null and void and could be set aside; (ii) any dealing subsequent to the AMLATFA vesting order was a nullity and could be set aside; and (iii) the removal of the caveat was irregular and liable to be set aside. (paras 48 & 51)

(4) The fact that the third defendant managed to register his name on the Register of Title did not automatically confer on him an indefeasible title. The indefeasibility of title or interest acquired under s. 340(1) of the National Land Code was liable to be set aside under s. 340(2) of the NLC where it has been obtained by, *inter alia*, fraud or forgery. Therefore, the title was subject to challenges and could be defeated although the proprietor or transferee acted in good faith in acquiring the title or interest. The plaintiff was the beneficial owner of the property and had been gravely prejudiced by the commission of the fraud committed/perpetrated by the Pakistani criminals (paras 53, 57 & 58)

Bahasa Malaysia *Headnotes*

Pada 2008, tiga warganegara Pakistan, seorang bernama Harris dan dua lagi ('penjenayah-penjenayah Pakistan') dikatakan telah menipu responden pertama ('plaintif') sebanyak 9 bilion rupee. Penjenayah-penjenayah Pakistan ini dikesan dan didapati berada di Malaysia. Susulan itu, polis mengenal pasti, membekukan dan menyita aset-aset penjenayah-penjenayah Pakistan tersebut bawah Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001 ('AMLATFA') dan mereka diusir ke Pakistan. Salah satu aset yang dirampas oleh pihak polis ialah sebidang tanah yang terbina atasnya sebuah rumah dua tingkat dan berdaftar bawah nama Harris ('hartanah'). Pihak polis mengeluarkan perintah pembekuan bawah s. 44 AMLATFA dan memohon agar Pendaftar Hak Milik Selangor ('defendan keempat') memasukkan kaveat Pendaftar ('kaveat') atas hartanah ini untuk mengelakkan apa-apa urusan atas hartanah ini sementara menanti siasatan. Pendakwa Raya mengeluarkan satu notis penyitaan ('notis') bawah s. 51(1) AMLATFA dan notis ini disampaikan kepada defendan keempat. Pada 2010, seorang bernama Lee Kam Sun ('defendan pertama') dan Ewe Chooi Lian ('defendan kedua'), pemilik-pemilik asal hartanah tersebut, memulakan satu tindakan di Mahkamah Tinggi terhadap Harris untuk memperoleh baki harga belian hartanah tersebut yang belum dibayar. Defendan pertama dan

kedua memperoleh penghakiman ingkar ('JID') kehadiran terhadap Harris bagi jumlah RM850,000. Defendan pertama dan kedua memulakan langkah menguatkuasakan JID melalui writ penyitaan dan jualan terhadap hartanah. Melalui satu perintah, mahkamah mengarahkan agar kesemua milikan, hak dan kepentingan dalam hartanah tersebut dilucuthakkan dan diletak hak pada plaintif ('perintah letak hak AMLATFA'). Bawah perintah letak hak, plaintif mengambil milikan hartanah. Walau bagaimanapun, tanpa pengetahuan plaintif, hartanah tersebut dilelong pada 2012 dan Lau Yong Ying ('defendan ketiga') berjaya dalam bidaannya dan membeli hartanah tersebut. Kaveat disingkirkan/dibatalkan oleh defendan keempat tanpa apa-apa notis terdahulu kepada pihak polis dan plaintif. Defendan ketiga dan kelima kemudian memeterai satu perjanjian kemudahan dan defendan ketiga membuat satu pajakan atas hartanah sebagai cagaran kemudahan. Apabila plaintif menjalankan pelbagai carian di mahkamah dan pejabat tanah, didapati bahawa (i) tindakan writ yang dimulakan oleh defendan pertama dan kedua terhadap Harris dan tindakan kuat kuasa selepas itu; (ii) hartanah dijual kepada defendan ketiga; dan (iii) defendan ketiga memfailkan permohonan penyingkiran kaveat. Ini menyebabkan plaintif memulakan satu tindakan, melalui saman pemula ('SP'), terhadap defendan-defendan bagi pelbagai pengisytiharan, perintah dan relif sampingan berkenaan milikan dan kepentingan plaintif dalam hartanah, secara undang-undang atau benefisial. Mahkamah Tinggi membenarkan SP dan memerintahkan pembatalan pendaftaran defendan ketiga sebagai pemilik dan mengarahkan plaintif didaftarkan sebagai pemilik hartanah. Maka timbul rayuan-rayuan ini.

Diputuskan (menolak rayuan-rayuan)

Oleh Hasnah Mohammed Hashim HMR menyampaikan penghakiman mahkamah:

(1) Notis disampaikan kepada defendan keempat, yang mempunyai tanggungjawab statutori untuk mengendorskan dalam dokumen hak milik. Defendan keempat gagal berbuat sedemikian. Seksyen 51(2) AMLATFA memperuntukkan apabila Pendaftar Hak Milik telah disampaikan notis penyitaan, beliau mesti mengendorskan terma-terma notis penyitaan pada dokumen hak milik bagi harta tak alih dalam Daftar di pejabat beliau. Selepas pengendorsan notis penyitaan dibuat, ini mempunyai kesan melarang kesemua urusan bagi harta tak alih. Walaupun defendan keempat tidak mengendorskan dokumen hak milik, ini tidak membatalkan notis.

(2) Perintah letak hak AMLATFA seterusnya mengukuhkan larangan apa-apa urusan atas tanah. Perintah letak hak AMLATFA yang memberi kesan pada hartanah, hingga kini, kekal berkuat kuasa dan tidak tercabar

dan, dengan itu, sah, mengikat dan berkuat kuasa. Oleh itu, apa-apa urusan berkenaan hartanah tersebut selepas perintah letak hak AMLATFA tidak sah dan terbatal. Urusan atau transaksi sedemikian mesti diisytiharkan tidak sah, terbatal dan diketepikan.

(3) Walaupun telah membatalkan kaveat, defendan keempat masih memeterai perintah persetujuan dengan defendan ketiga. Defendan keempat memilih untuk mengabaikan, bukan sahaja notis dan perintah letak hak AMLATFA, tetapi juga tanggungjawab statutori dan kesan-kesan rumit bawah undang-undang akibat pembatalan. Perintah persetujuan wajar diketepikan. Mahkamah Tinggi mempunyai kuasa mengetepikan perintah-perintah yang didapati tidak sah dan terbatal *ex debito justitae* atas alasan (i) apa-apa urusan selepas notis tidak sah dan terbatal dan boleh diketepikan; (ii) apa-apa urusan selepas perintah letak hak AMLATFA tidak sah dan boleh diketepikan; dan (iii) penyingkiran kaveat tidak teratur dan boleh diketepikan.

(4) Fakta bahawa defendan ketiga berjaya mendaftar namanya dalam Daftar Hak Milik tidak, secara automatik, memberinya hak milik boleh sangkal. Ketakbolehsangkalan hak milik atau kepentingan yang diperoleh bawah s. 340(1) Kanun Tanah Negara ('KTN') boleh diketepikan bawah s. 340(2) KTN jika diperoleh secara, antara lain, penipuan atau pemalsuan. Oleh itu, hak milik ini boleh dicabar dan ditewaskan walaupun pemilik atau pemindah bertindak dengan suci hati dalam memperoleh hak milik atau kepentingan. Plaintif ialah pemilik benefisial hartanah dan telah diprejudis secara serius oleh tindakan penipuan yang dilakukan oleh penjenayah-penjenayah Pakistan.

Case(s) referred to:

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Tuan Hj Ahmed Abdul Rahman v. Arab-Malaysian Finance Bhd [1996] 1 CLJ 241 FC ***(refd)***

Legislation referred to:

Anti-Money Laundering and Anti-Terrorism Financing Act 2001, ss. 44(1), (2), (5), 51(1)(a), (b), (2), (3), 54(1), (2), 56(1), 57, 61

National Land Code, ss. 321(3)(a), (4), 340(1), (2), (3), 420(2), (3)

(Civil Appeal No: B-02(A)-900-06-2015)

For the appellant - Americk Sidhu; M/s Americk Sidhu

For the respondents - Lambert Rasa-Ratnam, Bahari Yeow Tien Hong, Muhammad Faizal Faiz Mohd Hasani & Ong Wei Shen; M/s Lee Hishammuddin Allen & Gledhill

(Civil Appeal No: B-01(A)-214-07-2015)

For the appellant - Naziah Mokhtar; State Legal Advisor, Selangor

For the respondent - Lambert Rasa-Ratnam, Bahari Yeow Tien Hong, Muhammad Faizal Faiz Mohd Hasani & Ong Wei Shen; M/s Lee Hishammuddin Allen & Gledhill

(Civil Appeal No: B-02(A)-935-06-2015)
For the appellant - Shaikh Abdul Saleem & Hajinder Singh; M/s Shaikh David Raj
For the respondent - Lambert Rasa-Ratnam, Bahari Yeow Tien Hong, Muhammad Faizal Faiz Mohd Hasani & Ong Wei Shen; M/s Lee Hishammuddin Allen & Gledhill

[Editor's note: For the High Court judgment, please see The Bank Of Punjab v. Lee Kam Sun & Ors [2015] 7 CLJ 1114 (affirmed).]

Reported by Najib Tamby

JUDGMENT

Hasnah Mohammed Hashim JCA:

Introduction

[1] There were three appeals before us emanating from a single judgment of the learned Judicial Commissioner (as he then was) ('JC') given on 21 July 2015 allowing the respondent's originating summons ('the OS') granting the declarations and orders sought. The three appeals were as follows:

(i) Civil Appeal No: B-02(A)-900-06-2015 was filed by Lau Yong Ying ('the third defendant') on 25 May 2015;

(ii) Civil Appeal No: B-02(A)-935-06-2015 was filed by Alliance Islamic Bank Berhad ('the sixth defendant'); and

(iii) Civil Appeal No: B-01(A)-214-07-2015 was filed by the Pendaftar Hakmilik Pejabat Tanah dan Galian Selangor ('the fifth defendant').

[2] The Bank of Punjab is the first respondent in Civil Appeal No: B-02(A)- 900-06-2015 and the respondent in Civil Appeals No: B-01(A)-214-07-2015 as well as B-02(A)-935-06-2015. It was agreed by the parties that Civil Appeal No: B-02(A)-900-06-2015 be heard first and the decision of this appeal would bind the parties in respect of Civil Appeals No: B-01(A)- 214-07-2015 and B-02(A)-935-06-2015. Lee Kam Sun who was the first defendant in the High Court did not file any appeal. The second defendant's (Ewe Chooi Lian) appeal was struck out by this court on 1 December 2015.

[3] We had, after hearing submissions from learned counsel for the appellant and the respondent, unanimously dismissed this appeal. Accordingly, the decision in this appeal bound the other two appeals. We set out below our reasons for affirming the decision of the High Court.

[4] For convenience, in this judgment, the parties will be referred to as they were in the High Court. The background facts of this appeal are important to understand the context in which these appeals were brought.

Background Facts

[5] In 2008, three Pakistani citizens, namely Harris Afzal ('Harris'), Sheikh Muhammad Afzal and Hamza Afzal ('the Pakistani criminals') purportedly defrauded the Bank of Punjab ('the plaintiff') in the sum of Rupee 9 billion. By way of a Government to Government assistance, the Pakistani criminals were tracked and found to be in Malaysia. The Royal Malaysian Police ('RMP') identified, froze and seized the assets of the Pakistani criminals pursuant to the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('AMLATFA'). In 2009, the Pakistani criminals were deported to Pakistan.

[6] One of the assets consequently seized by the RMP was a piece of land held under the registered title of Geran No. 222376, Lot 21819, Bandar Country Heights, Daerah Ulu Langat, Selangor Darul Ehsan with a double storey house erected on it and registered in the name of Harris ('the property'). The RMP issued a freezing order pursuant to s. 44 of the AMLATFA. On 30 November 2009, the RMP requested the Pendaftar Hakmilik Selangor ('the Registrar') to lodge a Registrar's caveat ('the caveat') over the property to prevent any dealings with regard to the property pending investigation pursuant to AMLATFA.

[7] The Public Prosecutor issued a notice of seizure on 15 February 2010 pursuant to s. 51(1)(a) of the AMLATFA and the said notice was duly served on the Registrar.

[8] On 22 March 2010, Lee Kam Sun ('the first defendant') and Ewe Chooi Lian ('the second defendant'), who were the original proprietors of the property, filed a writ and statement of claim in the Shah Alam High Court against Harris to recover the unpaid balance of the purchase price of the property. The writ and statement of claim was served on Harris based on the address as stipulated in the sale and purchase agreement between Harris and the first and second defendants. On 17 September 2010, the first and second defendants obtained judgment in default of appearance (JID) for the sum of RM850,000 against Harris. The sum of RM850,000 was not only comprised of the balance sum of the purchase price, but also included the cost of renovation as well as penalty interest on the redemption sum. On 7 June 2011, the first and second defendants took steps to enforce the JID by way of a writ of seizure and sale ('WSS') on the said property for a sum of RM1,150,000.

[9] By a court order dated 27 October 2011, the Shah Alam High Court in a criminal application Suit No: 44-17-2011 ordered that all the ownership, rights and interests in the property were forfeited and vested in the plaintiff

('the AMLATFA vesting order'). Pursuant to the AMLATFA vesting order, the plaintiff took possession of the property. On 29 December 2011, the plaintiff duly published a legal notice in the national newspaper to notify the public that the plaintiff is the beneficial and lawful owner of the property. The property could not be sold or auctioned without the consent of the plaintiff. The original document title of the property was in the possession of the plaintiff.

[10] However, without the plaintiff's knowledge, the property was auctioned on 18 June 2012 and the third defendant (the appellant in this appeal) successfully bid and purchased the property for RM3,510,000.

[11] The third defendant's solicitors filed an application to remove the caveat on 30 July 2012. The fourth defendant, however sought the Selangor State Legal Advisor's ('SLA') view on the lifting and/or removing the caveat on 13 September 2012. However, without waiting for the SLA's advice, the caveat was removed/cancelled by the fourth defendant on 14 September 2012 without any prior notice to the RMP or the plaintiff.

[12] On 20 September 2012, the third defendant and the fourth defendant ('the Registrar') entered into a consent order ('the consent order') to remove the caveat without any due notice to the RMP and the plaintiff. The consent order was entered after the Registrar removed/cancelled the caveat on 14 September 2012. On the same date, the third defendant and the fifth defendant executed a facility agreement dated 20 September 2012 and a month later on 17 October 2012 the third defendant created a charge over the property as security for the facilities.

[13] The RMP immediately informed the SLA that the Shah Alam High Court had made the AMLATFA vesting order dated 27 October 2011 whereby the entire ownership of the property by law has been vested in the plaintiff. On 2 October 2012, the third defendant paid into the High Court an amount of RM3,211,900 being the full balance of the purchase price.

[14] The plaintiff conducted various searches at the courts and land offices and discovered the following:

(a) the writ action commenced by the first and second defendants against the said Harris and the subsequent execution action;

(b) that the property was sold to the third defendant; and

(c) the third defendant had filed an application for removal of the caveat.

[15] Despite various requests by the plaintiff to various parties to maintain the *status quo* of the property, the land title of the property was registered and issued to the third defendant. The full purchase price of RM3,451,848.59 was disbursed to the first and second defendants.

[16] On 5 December 2012, the plaintiff filed the OS against all the defendants for various declarations, orders and consequential reliefs in relation to the plaintiff's legal and beneficial ownership and interest in the property. The High Court granted an *ex parte* injunction order against, amongst others, the defendants. On 16 January 2013 the *inter partes* hearing was heard and the High Court granted an *ad interim* injunction order ("the first order"). The High Court further directed that the first and second defendants pay the sum of RM3,451,848.59 ("the said amount") into the High Court within seven days from the receipt of the first order.

[17] On 21 March 2013, the interim injunction hearing was heard in the presence of the first and second defendants and the High Court granted an interim injunction order ("the second order") and ordered that the first and second defendants to pay the said amount on or before 25 March 2013 at 2.30pm. On 25 March 2013, the first and second defendants applied for an extension of time of 14 days to comply with the second order. The High Court dismissed the application for extension of time and directed them to pay the said amount on or before 29 March 2013 at 3pm.

[18] The first and second defendants, however failed to comply with the first, second and third orders and undertook to pay RM2,000,000 into court within 14 weeks from 29 March 2013. On 16 April 2013, the first and second defendant sought an adjournment of their application and sought an extension of time to comply with the three orders and counsel for the first and second defendants informed the court that the first and second defendants did not pay the RM2,000,000. The first and second defendants had yet again failed to comply with the first order, second order, third order and the undertaking to pay the RM2,000,000 into court. On 30 May 2013 the third defendant filed an application to intervene in the proceeding as one of the defendants in the OS. The application was allowed by the High Court on 25 July 2013. On 6 August 2013 the plaintiff filed the amended OS which was allowed by the High Court on 12 May 2015.

[19] In the OS, the plaintiff had sought various declarations and orders that all dealings in respect of the property subsequent to the notice of seizure and the AMLATFA vesting order be declared null and void based on the following grounds:

A (a) the JID and the subsequent orders obtained by the first and second defendants contravened written law and should be set aside *ex debito justitiae*;

(b) any dealings in respect of the property subsequent to the notice of seizure or AMLATFA vesting order were null and void and should be
B set aside;

(c) the plaintiff is the legal and beneficial owner of the property pursuant to the AMLATFA vesting order;

(d) the removal of the caveat and the entry of the consent order was
C wrongful and illegal; and

(e) the title or interest of the third defendant is defeasible.

The High Court's Decision

[20] After hearing submissions from the parties, the learned JC allowed the
D plaintiff's OS and granted the declarations and orders sought. The High Court ordered the cancellation of the registration of the third defendant as proprietor, and directed that the plaintiff be registered as the owner of the property. The learned JC's decision can be summarised as follows:

E (a) the first, second and third defendants blatantly infringed and disregarded the provisions of AMLATFA;

(b) it would be unjust to the plaintiff to suffer as a result of the consequences of the fourth defendant's negligence and non-compliance with the explicit terms of AMLATFA which itself amounts to a criminal offence. The fourth defendant's omission and negligence was a clear
F contravention and defiance of substantive statutory prohibitions and obligations under AMLATFA;

(c) as a result, all dealings in relation to the property after the issuance of the notice seizure were rendered null and void on the grounds of
G illegality and lack of jurisdiction;

(d) where an order of the court, as in the cases of the JID in this case, is proved to be null and void on the ground of illegality or jurisdictional error, it has to be set aside *ex debito justitiae*;

H (e) it is trite law that a title, though obtained by a *bona fide* purchaser for value, is liable to be set aside if it is obtained through void instruments;

(f) the AMLATFA vesting order dated 27 October 2011 affecting the property which to date still remains in force and unchallenged is valid, binding and enforceable as it has not been set aside. It does not fall

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within the purview of ss. 420 (2) and (3) of the National Land Code ('NLC') which imposed statutory obligations on the court and the Registrar or Land Administrator. Failure to comply with s. 420 of the NLC by the parties concerned does not affect the validity or enforceability of the AMLATFA vesting order. Any dealing on the property subsequent to the AMLATFA vesting order is, hence, a nullity, void and unlawful and liable to be defeated and set aside; and

(g) the plaintiff is the actual and beneficial owner of the property who has been gravely prejudiced and denied its lawful right to the property as a consequence of the fraud committed by Harris.

The Appeal

Summary Of The Parties' Submission

[21] In the memorandum of appeal, the third defendant raised several grounds. The main thrust of the third defendant's appeal was that the learned JC had failed to judicially evaluate and appreciate the evidence before the court. Learned counsel for the third defendant invited us to intervene as it was the third defendant's contention that the learned JC had erred in failing to appreciate that the third defendant had purchased the property at a public auction pursuant to an execution proceedings commenced by the first and second defendants and thereafter, became the registered owner of the said property and under the NLC had indefeasible title of the property. Learned counsel for the third defendant focused his submissions on the following grounds:

(i) the effect and validity of the notice of seizure;

(ii) the effect and validity of the AMLATFA vesting order;

(iii) the removal of the caveat and the consent order; and

(iv) the validity of title or interest of the third defendant as purchaser and chargor.

[22] We had on 10 May 2016 directed the counsel to further submit on the following issues:

(i) what transpired between and after the freezing order, notice of seizure, JID, the WSS proceedings and the AMLATFA vesting order;

(ii) whether the action leading to the JID and the execution proceedings was initiated when the notice of seizure was valid;

(iii) who applied for the AMLATFA vesting order and whether there was sufficient proof submitted by the plaintiff to obtain the said vesting order;

(iv) was the AMLATFA vesting order valid;

(v) how does the law operate in respect of the notice of seizure and AMLATFA vesting order; and

(vi) the ownership of the property and the issue of indefeasibility.

[23] Learned counsel for the third defendant submitted that the sale of the property could not be set aside after the sale had become absolute. He argued that the issuance of the notice of seizure does not have the effect of prohibiting future dealings and/or registration of the property pursuant to s. 51(3) of the AMLATFA and of rendering registration of dealings of the property as null and void.

[24] Learned counsel further argued that the third defendant had validly purchased the property on 18 June 2012 for the sum of RM3,510,000 through a public auction conducted pursuant to a writ of seizure and sale. The execution proceeding was instituted by the judgment creditors against the judgment debtor, that is Harris for his failure to pay the balance purchase price. The judgment creditors had validly obtained the JID against Harris on 17 September 2010.

[25] The third defendant's learned counsel further submitted that the mere issuance of the notice of seizure did not have the effect of prohibiting future dealings with the property under s. 51(3) of the AMLATFA which would render the registration and/or dealing of the property null and void. Learned counsel argued in his submission that the non-compliance of s. 51(1)(b) of the AMLATFA means that the prohibitions in actual fact never came into effect as there was no endorsement of the notice of seizure as required by the Act on the Register Document of Title of the property.

[26] Furthermore, since there was no seizure in place or effected, thus any dealings and registration of the dealings could not be rendered null and void. The AMLATFA vesting order was thus void. Accordingly, pursuant to s. 340(1) of the NLC, the third defendant's title was indefeasible.

[27] It was learned counsel's submission that the caveat was correctly removed/cancelled pursuant to s. 321(3)(a) of the NLC and this was further confirmed by the consent order dated 20 September 2012 entered between the third defendant and the Registrar.

[28] In response, learned counsel for the plaintiff submitted that the High Court had correctly held that by virtue of s. 54(1) and (2) of the AMLATFA the purported title and interest of the third defendant was null and void and cannot be registered or given effect by any person or authority. Once a notice of seizure is issued under AMLATFA, all subsequent dealings relating to the assets seized are null and void.

[29] It was not in dispute that the notice of seizure was duly served on the Registrar who is under a statutory duty to immediately endorse in the Register the terms of the notice of seizure on the document of title. By failing to take the steps to endorse, the Registrar had breached his statutory duty. However, it was submitted by learned counsel for the plaintiff that the failure of the Registrar to do so did not in any way affect the validity or legal effect of the said notice of seizure. There was no evidence before the court that the seizure of the property was no longer in force at the material time. The property was transferred and vested in the plaintiff by virtue of the AMLATFA vesting order.

[30] It was further submitted that the writ and statement of claim by the first and second defendants as well as the WSS contravened the provisions of AMLATFA as the WSS was initiated after the issuance of the notice of seizure. On the date of the auction, 18 June 2012, the Shah Alam High Court had already granted the AMLATFA vesting order pursuant to ss. 56 and 61 of the AMLATFA. The first and second defendants, therefore could not transfer any title to the third defendant when on that date of the said auction, the rights, title and interest in the property by virtue of the AMLATFA vesting order was transferred and vested in the plaintiff. Accordingly, based on the principle of *nemo dat quod non habet* the third defendant could not have created any charge over the property.

Decision

Effect And Validity Of The Notice Of Seizure

[31] The principal issue before us was the validity of the notice of seizure dated 15 February 2010 and whether it has any effect on the registration of the property in the third defendant's name. The freezing order dated 30 November 2009 was issued by the RMP pursuant to s. 44(1) of the AMLATFA. Section 44 of the AMLATFA is reproduced below:

> (1) Subject to section 50, where an enforcement agency, having the power to enforce the law under which a serious offence is committed, has reasonable grounds to suspect that an offence under subsection 4(1) or a terrorism financing offence has been, is being or is about to be committed by any person, it may issue an order freezing any property of that person or any terrorist property, as the case may be, wherever the property may be, or in his possession, under his control or due from any source to him.

[32] Section 44(2) of the same Act further provides that the order issued under sub-s. (1) may include:

A

(a) an order to direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances, if any, as are specified in the order; and

(b) an order to authorise any of its officers to take custody and control of the property, or such part of the property as is specified in the order if the enforcement agency is satisfied that the circumstances so require.

B

[33] On the same date, the RMP requested the Registrar to enter a Registrar's caveat on the said property. The freezing order expired on 28 February 2010. However, before the expiry of the said freezing order, the notice of seizure was issued on 15 February 2010. It was argued by learned counsel for the third defendant that under the law, the freezing order is valid for 90 days and would have ceased to have any effect after 90 days from its inception. In support of his arguments, learned counsel referred to s. 44(5) of the AMLATFA:

C

D

(5) An order made under subsection (1) shall cease to have effect after ninety days from the date of the order, if the person against whom the order was made has not been charged with an offence under this Act or a terrorism financing offence, as the case may be.

E

[34] Therefore, learned counsel argued that the Registrar ought to have cancelled and/or removed the caveat on 28 February 2010 before the expiry of the freezing order but this was not done. As the cancellation and/or removal was not done and the freezing order had expired, it would consequently have ceased to have effect after 90 days. Therefore, the third defendant had every right to apply for the removal of the caveat on 30 July 2012.

F

[35] Learned counsel for the third defendant argued that an application for forfeiture must be made within 12 months of the seizure or freezing order. He referred to s. 56(1) of the Act:

G

Subject to section 61, where in respect of any property frozen or seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of the freeze or seizure, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under subsection 4(1) or a terrorism financing offence, as the case may be, or is terrorist property.

H

[36] He further argued that the AMLATFA vesting order dated 27 October 2011 was void as the plaintiff did not have title to the property at any point of time. In the said vesting order, the High Court ordered amongst others as follows:

I

(1) All the properties stated in paragraph (2) be released and delivered to The Bank of Punjab and/or its solicitors in Malaysia by the relevant Malaysia Government Agencies;

(2) All the movable and immovable properties registered in the name of the Respondents involved in this proceedings be delivered its vacant possession, its possession, be transferred and be registered in the name of The Bank of Punjab. The said properties are as follows:

(a) …

(b) …

(c) …

(d) …

(e) …

(f) …

(g) …

(h) …

(i) …

(j) a bungalow house bearing the address of No. 41, Persiaran Cinta Alam, Lot 146, Country Heights, Kajang, Selangor, in Lot 21819, Geran No222376 Bandar Country Height, Daerah Ulu Langat, Selangor Darul Ehsan registered in the name of the Second Respondent seized on 15.2.2010;

(k) …

(l) …

(m) …

(n) …

(o) …

(p) …

(q) …

(3) The Registrar of the Court or any other relevant authorities be given the power to do all the necessary to perfect the transfer and the registration including to sign all the transfer instruments and the registration of the movable and immovable properties as stated in paragraph (2) above to the Bank of Punjab;

(4) The Bank of Punjab will bear:

(a) the costs of this proceedings of RM31,500.00;

(b) the administrative costs and maintenance charge of RM59,980.00; and

A (c) such other stamp duties, taxes and incidental costs that may be imposed in respect of the transmission and/or transfer of the movable and immovable properties as stated in paragraph (2) above.

(5) The costs referred to in paragraph 4(a) and (b) above shall be paid by the Bank of Punjab to the relevant agencies of the Government of Malaysia within 30 days of the date of this Order, and the agencies of the Government of Malaysia will, within the same period of 30 days endeavor to deliver over vacant possession of the immovable properties and handing over of possession of the movable properties as stated in paragraph (2) above.

[37] It is undisputed that the notice of seizure was served on the Registrar who is under a statutory duty to endorse in the document of title. However, the Registrar failed to do so. Where any immovable property is seized under s. 51(1) of the AMLATFA the seizure shall be effected by the following actions taken:

(1) Where the Public Prosecutor is satisfied on information given to him by an investigating officer that any immovable property is the subject-matter of an offence under subsection 4(1) or a terrorism financing offence or evidence of the commission of such offence or is terrorist property, such property may be seized, and the seizure shall be effected-

(a) by the issue of a Notice of Seizure by the Public Prosecutor setting out the particulars of the immovable property which is seized in so far as such particulars are within his knowledge, and prohibiting all dealings in such immovable property;

(b) by publishing a copy of such Notice in two newspapers circulating in Malaysia, one of which shall be in the national language and the other in the English language; and

(c) by serving a copy of such Notice on the Land Administrator or the Registrar of Titles, as the case may be, in Peninsular Malaysia, or on the Registrar of Titles or Collector of Land Revenue, as the case may be, in Sabah, or on the Director of Lands and Surveys or the Registrar responsible for land titles, as the case may be, in Sarawak, of the area in which the immovable property is situated.

[38] Section 51(2) of the AMLATFA provides once the Registrar of Titles has been served with a notice of seizure, he must endorse the terms of the notice of seizure on the document of title in respect of the immovable property in the Register at his office:

The Land Administrator, the Collector of Land Revenue, the Director of Lands and Surveys, the Registrar of Titles or the Registrar responsible for land titles, as the case may be, referred to in subsection (1) shall immediately upon being served with a Notice of Seizure under that subsection endorse the terms of the Notice of Seizure on the document of title in respect of the immovable property in the Register at his office.

[39] The law is crystal clear that where an endorsement of a notice of seizure has been made, it shall have the effect of prohibiting all dealings in respect of the immovable property. After such endorsement has been made, no dealing in respect of the immovable property shall be registered, regardless whether it was effected before or after the issue of such notice or the making of such endorsement. Section 51(3) of the AMLATFA reads:

> Where an endorsement of a Notice of Seizure has been made under subsection (2), the Notice shall have the effect of prohibiting all dealings in respect of the immovable property, and after such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless whether it was effected before or after the issue of such Notice or the making of such endorsement.

[40] We agree with the learned JC that although the Registrar did not endorse in the document of title, it does not invalidate the notice of seizure. Section 54 of the AMLATFA expressly provides that as long as the seizure remains in force, any dealings remain null and void:

> (1) Where any property has been seized under this Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property, except any dealing effected under this Act by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Federal Government, or the Government of a State, or a local authority or other statutory authority, shall be null and void, and shall not be registered or otherwise be given effect to by any person or authority.
>
> (2) Subsection (1) shall be in addition to and not in derogation of subsections 51(3) and (4).
>
> (3) For so long as a seizure of any property under this Act remains in force, no action, suit or other proceedings of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgment or decree, regardless whether such claim was made, or such judgment or decree was given, before or after such seizure was effected, except at the instance of the Federal Government or the Government of a State, or at the instance of a local authority or other statutory authority, or except with the prior consent in writing of the Public Prosecutor.

[41] The first and second defendants filed the writ and statement of claim on 22 March 2010 and obtained the JID on 17 September 2010 after the notice of seizure was issued. The law expressly provides that after "… property has been seized under this Act, and so long as such seizure remains

in force, any dealing effected by any person or between any persons in respect of such property… shall be null and void, and shall not be registered or otherwise be given effect to by any person or authority."

[42] We were in full agreement with the learned JC that by virtue of s. 54(1) of the AMLATFA the title and interest of the third defendant as purchaser is null and void and cannot be registered or given effect to any person as the notice of seizure was served on the Registrar. Furthermore, s. 57 of the same Act provides:

> Where the freeze, seizure or sale of any property has been effected under this Act, the validity of such freeze, seizure or sale, or other form of disposal of such property, or of any destruction of the property in accordance with the provisions of this Act, in consequence of such freeze, seizure or sale, shall not be affected by any objection to it relating to the manner in which the freeze, seizure or sale was effected, or the place at which it was effected, or the person from whom it was effected, or the person to whom any notice of the freeze, seizure or sale was given, or omitted to be given, or any failure to conform to any procedural provision of this Act or of any other written law in effecting the freeze, seizure or sale.

[43] The AMLATFA vesting order further cemented the prohibition of any dealings in respect of the property. We were of the considered view that the AMLATFA vesting order affecting the property to date still remains in force and unchallenged and is therefore valid, binding and enforceable. Thus, any dealing in respect of the property subsequent to the AMLATFA vesting order is a nullity and unlawful. Therefore, such dealing or transaction must be declared void, illegal and set aside.

The Judgment In Default (JID)

[44] We now turn to deal with the appeal in respect whether the plaintiff has *locus standi* to set aside the JID. As alluded to earlier, the first and second defendants' writ action was filed and that personal service was effected at the property. Learned counsel for the third defendant submitted that the writ and statement of claim filed against Harris by the first and second defendants were for a debt due and had absolutely nothing to do with the property in question nor the notice of seizure.

[45] With respect, we disagreed. First, this case arose because Harris had defrauded the plaintiff the sum of Rupee 9 billion. Harris and his accomplices were arrested and deported to Pakistan. The RMP took steps to identify, freeze and seize the assets of Harris pursuant to the AMLATFA. The thrust of the plaintiff's case was that all the dealings, transactions and court

proceedings initiated by the first and second defendants relating to the property after the issuance of the notice of seizure contravened the provisions of AMLATFA.

[46] The JID was obtained after the issuance of the notice of seizure. Therefore, by virtue of the provisions of the AMLATFA, any dealing subsequent to the notice of seizure is a nullity and void. The learned JC in his judgment held that where a JID can be proved to be null and void on the grounds of illegality or jurisdictional error, it has to be set aside *ex debitio justitiae*. The governing principle on the powers of the court to set aside JID can be clearly seen in the judgment of the Supreme Court in the case of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75. In *Badiaddin*'s case, the Federal Court discussed the inherent jurisdiction of the High Court to set aside its own order where it can be proved to be null and void on the ground of illegality or lack of jurisdiction:

> It is settled law that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. The one special exception to this rule is where the final judgment of the High Court can be proved to be null and void on the ground of illegality or lack of jurisdiction. Apart from the breach of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court *ex debito justitiae* to a category of cases involving orders which contravened any written law, the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on the ground of illegality or lack of jurisdiction. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases, where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice.

[47] The Federal Court in *Tuan Hj Ahmed Abdul Rahman v. Arab-Malaysian Finance Berhad* [1996] 1 CLJ 241, at p. 247, had this to say about an irregular judgment:

> It is elementary that an irregular judgment is one which has been entered otherwise than in strict compliance with the rules or some statute or is entered as a result of some impropriety which is considered to be so serious as to render the proceedings a nullity.
>
> The general rule is that when it is clearly demonstrated to the satisfaction of the court that a judgment has not been regularly obtained, the defendant is entitled to have it set aside *ex debito justitiae*, that is to say, irrespective of the merits and without terms.

[48] In the circumstances, we were in full agreement with the learned JC that the High Court has the power to set aside the orders found to be null and void *ex debito justitiae* on the following grounds:

(a) any dealing subsequent to the notice of seizure dated 15 February 2010 is null and void and can be set aside;

(b) any dealing subsequent to the AMLATFA vesting order dated 17 October 2011 is a nullity and can be set aside; and

(c) the removal of the caveat was irregular and liable to be set aside.

The Removal Of The Registrar's Caveat And The Consent Order

[49] We agree with the contention of learned counsel for the plaintiff that the removal of the caveat was irregular. Section 321(3) of the NLC provides:

> A Registrar's caveat shall continue in force until it is cancelled by the Registrar:
>
> (a) of his own motion; or
>
> (b) on an application in that behalf by the proprietor of the land affected; or
>
> (c) pursuant to any order of the Court made on an appeal under section 418 against his decision to enter the caveat,
>
> or his refusal of any application for its cancellation under paragraph (b).

[50] Where the Registrar effects a cancellation under sub-s. (3), the Registrar, if he is acting under para. (a) of that sub-section, shall notify the proprietor of the land and any person or body having a registered interest in the land affected (see: s. 321(4) of the NLC). The Registrar had in fact through the SLA sent a letter dated 13 September 2012 to the RMP enquiring if they had any objection against the removal of the caveat. However, without waiting for the response from the RMP, the Registrar proceeded to remove the caveat. The RMP by a letter dated 25 September 2012 informed the SLA that the plaintiff is the owner of the property. The third defendant explained that the consent order was entered during a case management for the purpose of formality.

[51] With respect, we disagreed as such a position was misleading and devoid of merits. We were indeed perplexed that despite having cancelled the caveat on 14 September 2012, the Registrar nonetheless proceeded to enter into the consent order with the third defendant on 20 October 2012. We were of the opinion that the Registrar chose to ignore not only the notice of seizure and the AMLATFA vesting order but also his statutory duty as

well as the legal ramifications of such a cancellation. In the circumstances, we were of the considered view that the consent order dated 14 September 2012 is irregular and must be set aside.

The Ownership Of The Property And The Issue Of Defeasibility

[52] Section 340(1) of the NLC reads as follows:

> (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

[53] The indefeasibility of title or interest acquired under s. 340(1) of the NLC is liable to be set aside under s. 340(2) of the NLC where it has been obtained by, *inter alia*, fraud or forgery. Thus, the title is subject to challenged and can be defeated although the proprietor or transferee acted in good faith in acquiring the title or interest:

> (2) The title or interest of any such person or body shall not be indefeasible:
>
> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
>
> (b) where the registration was obtained by forgery, or by means of an insufficient or void instrument; or
>
> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

[54] Section 340(3) of the NLC provides:

> Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in subsection 2:
>
> (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
>
> (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
>
> Provided that nothing in this subsection shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

[55] The learned JC concluded that based on the evidence before him that all the dealings in respect of the property by the original proprietors (the first and second defendants), the purchaser (the third defendant) and the chargee (the fifth defendant) subsequent to the issuance of the notice of seizure was tainted as it contravened the provisions of AMLATFA and therefore, null and void.

[56] As the AMLATFA vesting order remains in force and not set aside, it is valid, binding and enforceable and effective. The third defendant may have registered the property under his name but his rights and interests over the property can be challenged because on the date of the public auction of the property, the ownership, right and interest in the property had been already duly vested with the plaintiff pursuant to the AMLATFA vesting order. The original proprietors could not have transferred the ownership, rights, title and interests of the property to the third defendant due to the prior existence of the AMLATFA vesting order.

[57] The fact that the third defendant managed to register his name on the Register of Title did not automatically confer on him an indefeasible title. In other words, the schematics of the registration of the third defendant as the owner of the property was open to enquiry. That was precisely what the learned JC did and had correctly concluded that the third defendant does not have a valid title to the property as it was a subject matter of the AMLATFA vesting order. His reasons were set out in his grounds of judgment and we reproduce the relevant part hereunder:

> [16] From the facts and circumstances of the present matter, it would be save *(sic)* to surmise that the material facts referred to were not presented wholly to the court in the action purportedly initiated by the 1st and 2nd Defendants and/or in the execution proceedings that ensued thereafter. This court is seized with the jurisdiction to set aside the earlier Orders should they found to be null and void by reason of illegality and/or lack of jurisdiction.

[58] The learned JC had correctly concluded that the plaintiff is the beneficial owner of the property and had been gravely prejudiced by the commission of the fraud committed/perpetrated by the Pakistani criminals.

Conclusion

[59] From the perusal of the appeal records and having read and heard submissions from both learned counsel, there appeared to be no cogent basis for this court to intervene in its appellate capacity. The findings of the learned JC were premised on the evidence available to him and could neither be said to be improbable nor implausible. For the reasons we have set out in this judgment, we were of the considered view that this appeal must fail.

[60] We unanimously dismissed the appeal and affirmed the decision of the High Court. Since it was agreed that the decision of this appeal will also bind the other two appeals, we dismissed Civil Appeal No: B-01(A)-214-07-2015 and Civil Appeal No: B-02(A)-935-06-2015 with costs. Learned counsel for the plaintiff requested that no costs be granted against the purchaser and the chargee (Civil Appeal No: B-02(A)-900-06-2015 and Civil Appeal No: B-02(A)-935-06-2015). For Civil Appeal No: B-01(A)-214-07-2015 we ordered costs of RM10,000 subject to the payment of allocatur. We ordered that the deposits for all the three appeals be refunded.